



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2015-0768

RIN 1625-AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway and Indian Creek, Miami, FL.

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes modifying the operating schedule that governs the West 79th Street Bridge across the Atlantic Intracoastal Waterway mile 1084.6, Miami, FL and the operating schedule that governs the East 79th Street Bridge across Miami Beach Channel, Miami, FL. This action will place the East and West 79th Street Bridges across Miami Beach Channel and Atlantic Intracoastal Waterway, Miami, FL on a twice an hour opening schedule between 7 a.m. and 7 p.m., Monday through Friday, except Federal holidays. This action is intended to reduce vehicular traffic caused by these bridges opening on demand.

DATES: Comments and related material must reach the Coast Guard on or before [Insert date 60 days after date of

publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2015-0768 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Michael Lieberum of the Coast Guard; telephone 305-415-6744, e-mail Michael.b.lieberum@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
§	Section Symbol
U.S.C.	United States Code
FDOT	Florida Department of Transportation
AICW	Atlantic Intracoastal Waterway

II. Background, Purpose and Legal Basis

The East and West 79th Street Bridges currently open on signal, pursuant to 33 C.F.R. 117.5, which results in frequent

openings that restrict vehicle traffic during the day, especially during morning and afternoon rush hour traffic. The Florida Department of Transportation (FDOT), the bridge owner, and the City of North Bay Village requested a change to the current operating schedule for both bridges to allow for scheduled openings twice an hour during peak traffic times. Bridge logs indicate these bridges open up to four times an hour or more during peak travel times, which results in frequent vehicular traffic disruptions.

This proposed regulation would reduce vehicle traffic backups without unreasonably restricting vessel traffic by scheduling two openings per hour during peak traffic times, thereby balancing the needs of both modes of transportation.

Additionally, other bridges on this section of the Intracoastal Waterway and Miami Channel open two times per hour. The proposed scheduled openings will align the 79th Street bridge openings with other bridges on the Intracoastal, namely, the Broad Causeway Bridge to the North (33 CFR 117.261(mm)) and The Venetian Causeway Bridge to the South (33 CFR 117.261(nn)), thereby allowing vessels to plan voyages during opening times and vehicles to schedule commutes around these openings.

The East 79th Street Bridge across Miami Beach Channel, Miami, FL has a vertical clearance of 25 feet at MHW in the

closed to navigation position and a horizontal clearance of 60 feet between fenders.

The West 79th Street Bridge across the Atlantic Intracoastal Waterway mile 1084.6, Miami, FL has a vertical clearance of 25 feet at MHW in the closed to navigation position and a horizontal clearance of 90 feet between fenders.

III. Discussion of Proposed Rule

The Coast Guard proposes to amend 33 CFR 117.261. The Coast Guard will add paragraph (mm1) to this section. Under this proposed regulation, the draw of the West 79th Street Bridges, at Miami, Florida would open twice an hour, once on the hour and once on the half-hour, Monday through Friday between the hours of 7 a.m. and 7 p.m. During nights and weekends and on Federal holidays, the Bridge would open on signal.

The Coast Guard further proposes to add section 117.304 to title 33 of the CFR. This section will be entitled "Miami Beach Channel" and would add the schedule for the East 79th Street Bridge that will be identical to the proposed schedule for the West 79th Street Bridge stated above.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders (E.O.s) related to

rulemaking. Below we summarize our analyses based on these statutes and E.O.s and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under E.O. 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on vessels being able to plan voyages that require transiting the bridge during the scheduled opening periods or, when capable of doing so, vessels may transit under the bridge at any time. This rule will further meet the reasonable needs of navigation while taking into consideration the reasonable needs of vehicular traffic.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during

rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section

above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian

tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded

from further review, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the Federal Register (70 FR 15086).

Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read

as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In §117.261, add paragraph (mm1) to read as follows:
§117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(mm1) West 79th Street Bridge. The draw of the West 79th Street Bridge, at Miami, Florida will open on signal, except that from 7 a.m. to 7 p.m. Monday through Friday, except Federal holidays, the draw need only open on the hour and half hour.

* * * * *

3. Add §117.304 to read as follows:

§117.304 Miami Beach Channel.

The draw of the East 79th Street bridge, at Miami, Florida will open on signal, except that from 7 a.m. to 7 p.m. Monday through Friday, except Federal holidays, the draw need only open on the hour and half hour.

Dated: May 4, 2016

S. A. Buschman,

Rear Admiral, U.S. Coast Guard,
Commander, Seventh Coast Guard District

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